

1 to your files?

2 A Yes, the same thing.

3 MR. HOLT: Mr. Begleiter, has a search been
4 conducted in those files for that document?

5 MR. BEGLEITER: Would you like me to answer that
6 question in Mr. Nourain's presence or out of his presence?

7 MR. HOLT: That would be fine.

8 JUDGE SIPPEL: I'll excuse the witness. You want
9 to step outside, Mr. Nourain.

10 (Continued on next page.)

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

1 MR. BEGLEITER: A comprehensive search was made of
2 his files last weekend. I believe that one of the documents
3 that we have today is the document that he's referring to.
4 But he doesn't remember it and that's my speculation. If we
5 could find that document, we'd of course produce it. We
6 don't have it.

7 MR. WEBER: I'm not sure if it's ever really been
8 made certain that it's even a single document that COMSEARCH
9 gave him. I mean, I -- COMSEARCH may have sent him some of
10 these forms like which do appear within the -- the various
11 applications that COMSEARCH prepares. I don't know. I
12 had --

13 MR. BEGLEITER: Once you hear Mr. Lehmkuhl, he
14 doesn't have a copy of any document like that. We can ask
15 Mr. Nourain just to search for it when he gets back to New
16 York. I mean, I'm not -- you know, if it exists, it exists.

17 MR. HOLT: Okay. That's what I wanted to know.
18 And if you would ask him to take a look, that would be good.

19 JUDGE SIPPEL: And this is -- this is, again, the
20 COMSEARCH --

21 MR. HOLT: No, this is the document that was
22 generated -- that he received prior to preparing this April
23 26th memo.

24 MR. BEGLEITER: It's the trigger document.

25 JUDGE SIPPEL: The trigger document, okay.

1 MR. BEGLEITER: The trigger document. And we
2 looked through all his documents.

3 JUDGE SIPPEL: Well, COMSEARCH -- I'm hopeful that
4 that issue can be cleared up by Mr. Lehmkuhl because --

5 MR. BEGLEITER: It can't be because we already got
6 a call. Mr. Lehmkuhl doesn't know of a document that was
7 just described by Mr. Nourain. Maybe Mr. Nourain could
8 straighten it out.

9 JUDGE SIPPEL: Well, he'll have to --

10 MR. BEGLEITER: Right.

11 JUDGE SIPPEL: -- when he gets back to New York,
12 he'll have to try to do that. I mean, he'll have tomorrow
13 and Friday to -- well, is he in town tomorrow?

14 MR. BEGLEITER: I don't know. Well, as far as the
15 trigger document -- okay, as far as we know, we've given
16 everything over now including all the documents in the
17 vicinity of that last week in April.

18 JUDGE SIPPEL: All right. Well, let's get this
19 Witness back in. We'll clear this up on the record. Do you
20 have a lot more?

21 MR. HOLT: I'm going to try to move on.

22 JUDGE SIPPEL: Mr. Nourain is back on the stand.
23 And I'll just -- let the record reflect in an off the record
24 discussion with counsel that Liberty will be -- and Mr.
25 Nourain, upon your return to New York -- will make an

1 additional effort to locate this document that prompted you
2 to write this April 26th memo, as well as the -- a list of -
3 - the consolidated list or lists of the COMSEARCH data on
4 the emission designator changes. All right. Do you
5 understand? Those are two separate documents.

6 THE WITNESS: I understand, sir.

7 JUDGE SIPPEL: Now, counsel certainly clearly
8 understands what we have in mind.

9 MR. BEGLEITER: Absolutely.

10 JUDGE SIPPEL: All right. And as soon as it's --
11 it becomes available, it will be, you know, faxed
12 immediately to the other side so that preparation can be
13 made for the next witness. All right. Let's -- can we move
14 to another subject now, Mr. Holt?

15 MR. HOLT: Yes, I have one follow -- final
16 question on this April 26th memo, Your Honor.

17 BY MR. HOLT:

18 Q Mr. Nourain, I think your testimony -- during your
19 earlier testimony, you indicated that when you spoke with
20 Mr. Lehmkuhl, you expressed some anger with him for not
21 having filed STAs earlier?

22 A That was my concern with that, yes.

23 Q During that conversation -- that conversation
24 occurred around April 26th, 1995?

25 A I'd say around that time, yes.

1 Q And in fact, it was prior to the time you drafted
2 this April 26th memo.

3 A I believe so, yes.

4 Q I'm curious to know why the April 26th memo
5 doesn't refer to any failure on the part of Mr. Lehmkuhl or
6 Pepper & Corazzini to file STAs.

7 A All of that discussion was done in the meeting.
8 The purpose of this letter was to inform Mr. Milstein that
9 I'm applying for the STA.

10 Q And you didn't think it was necessary to apprise
11 Mr. Milstein in this memo that Pepper & Corazzini had failed
12 to file STAs earlier?

13 A He already knew that. No.

14 Q Do you maintain your files in a manner that will
15 allow you to locate documents easily if asked to do so?

16 A I don't think so.

17 MR. HOLT: If I may, Your Honor, I'm just checking
18 through my notes here. I'm prepared to continue.

19 BY MR. HOLT:

20 Q Mr. Nourain, during the period of late 1994, early
21 1995, let's say through July 1995, is it fair to say that
22 you were familiar with the addresses where Liberty was
23 receiving service -- the receiver locations? For instance,
24 if I were to refer you to the addresses listed in Appendix
25 A, Exhibit 30.

1 A Yes. What is your question?

2 Q Were you familiar with each of the locations? Did
3 you know that Liberty was providing service to each of the
4 locations listed in Appendix A?

5 A Yes.

6 Q Okay. So if somebody had said to you is Liberty
7 providing service to 2727 Palisades Ave., you knew that?
8 You could say yes or no, correct?

9 A If the service was started. See, that part of it
10 is when the service was started, there were other people,
11 installation groups, those that were going there actually
12 provide the service. So I would not necessarily know that.
13 I was -- if the system was installed and basically I knew at
14 that time and when we were ready to activate.

15 Q Okay. So if somebody were to say to you has
16 service been -- has the path -- the receive site located at
17 2727 Palisades Ave. activated, you would have known that
18 information?

19 A I would know that if it's ready to be activated.

20 Q And you would have know if it hadn't been?

21 A Yes. Let me just back up on that. Activation of
22 it, again, would be that if they put the -- again, I have to
23 get into the technical part of it. There was -- as I
24 mentioned, there's a power supply that the distribution part
25 of the component -- the distribution group would have put

1 that.

2 And at that point, they would probably power that
3 system that they've already tested it. So they came to the
4 location; that system was tested and aligned maybe a few
5 days before. And then it was turned off. And then it would
6 have been activated after the whole package was constructed
7 and completed. But it was -- as I mentioned before, it was
8 within a day or so. It was not -- you know. But I know
9 overall, yes.

10 Q Okay. I'd like to focus on your instructions to
11 Mr. Lehmkuhl with respect to the filing of special temporary
12 authority requests. Is it your testimony that Mr. Lehmkuhl
13 was instructed in every instance when Liberty filed a -- let
14 me rephrase. Withdrawn. Was it -- is it your testimony
15 that Mr. Lehmkuhl was given instructions or the firm of
16 Pepper & Corazzini was given instructions to file STA
17 requests every time they filed an application for an OFS
18 license?

19 A The question is general --

20 Q Correct.

21 A -- or after a certain date that you preferred?

22 Q I want -- I'm getting at what instructions were
23 given to the law firm of Pepper & Corazzini with respect to
24 the filing of STA requests.

25 A I have said that this morning that they were --

1 the procedure was for them to go on particularly because of
2 the licensing delays which I referred to that. So --

3 Q Okay. There are certain delays associated with
4 some licenses that were being consolidated by the FCC, is
5 that right?

6 A Yes.

7 Q And Liberty filed STA requests for those licenses?

8 MR. BEGLEITER: Objection.

9 JUDGE SIPPEL: We've already -- we've been down
10 this road?

11 MR. BEGLEITER: Yes, I mean, a million times that
12 they were -- they were filed.

13 JUDGE SIPPEL: I'm going --

14 MR. BEGLEITER: Okay.

15 JUDGE SIPPEL: -- I'm going to let the question.

16 But --

17 MR. HOLT: Thank you.

18 THE WITNESS: Repeat that again, please.

19 BY MR. HOLT:

20 Q And these licenses -- the licenses -- what I'm
21 trying to find out is were STA requests filed to your
22 knowledge for the licenses that were subject to delays
23 because they were being consolidated by the FCC?

24 A That's what was supposed to be done and I was
25 routinely getting the STAs.

1 Q Okay. And -- and you were getting renewals of
2 those STAs periodically. Is that what you mean by routinely
3 receiving STAs?

4 A Well, you're saying the renewal. The renewal or
5 the new path are all the same to me. I was getting the
6 STAs. I would not know that it was a renewal or a new one
7 because there were no addresses on that. The STA would come
8 against a transmitter. But I knew that the STA would
9 routinely come in. And I would have turned the path on
10 based on my assumption of it.

11 Q Okay. And -- and if I understand you correctly,
12 Pepper & Corazzini was under instructions to file STAs and
13 renewal of the STAs automatically with respect to these
14 licenses that were held up because they were being
15 consolidated by the FCC.

16 A That's correct.

17 Q Okay. Now, were there another set of licenses
18 that were not being held up because of this consolidation by
19 the FCC?

20 A I don't -- I can't answer that question.

21 Q Well, to your knowledge, during the period late
22 '94 and through middle of '95, was Liberty filing
23 applications with the FCC that were not being delayed
24 because of this consolidation that you talked about?

25 A Oh, the consolidation was ended after I got a lot

1 of licenses the latter part of 1994. So from 1995, I don't
2 think we had that problem.

3 Q Okay. Do you recall approximately when in late
4 1994 you -- the consolidation problem was --

5 A I think the first I got were some were in
6 December. They were -- I got a lot of licenses.

7 Q Okay. Now -- so there were a set of licenses that
8 you were -- that you were seeking through applications
9 separate and apart from the licenses that were being
10 consolidated. That problem had been resolved and you were
11 then -- you were proceeding with filing applications for
12 licenses for different paths, right?

13 A At what date?

14 Q After December '94.

15 A I was doing everything routinely. And the STA was
16 -- and Pepper & Corazzini were instructed to apply for STAs.

17 Q Okay. I want to focus on the licenses that you
18 were applying for that were not -- you said that the
19 consolidation issue had been resolved by December of '94.
20 And Pepper & Corazzini was proceeding with filing new
21 applications on behalf of Liberty, correct?

22 A You're assuming that only the consolidation caused
23 me wanting FCC -- wanting Pepper & Corazzini to apply for
24 STAs. I asked Pepper & Corazzini to apply for STAs all the
25 time.

1 Q In every instance that they filed a license
2 application?

3 A They were instructed to apply for STAs, yes.

4 Q There were no special criteria that you or Liberty
5 used with respect to when an STA should be applied for and
6 when it shouldn't be applied for?

7 A That was a legal matter and he was supposed to do
8 that. And my information -- my -- my job was to get the
9 technical part of it completed and hand it to him to file
10 and apply for STAs.

11 Q But you also had responsibility yourself for
12 signing the STA applications around this time period,
13 correct?

14 A As I mentioned before, that STA application, I
15 already signed the blank one to give it to him for him to
16 expedite his processing.

17 JUDGE SIPPEL: He told us for days how he does
18 this. I mean, he was signing these things in stacks and
19 sending them to Mr. Lehmkuhl. When he got down to four or
20 five, Mr. Lehmkuhl would say I need another stack.

21 MR. HOLT: Well, Your Honor, with respect to the
22 STA requests, I'm not certain that that's the case.

23 JUDGE SIPPEL: Well, that's what he said.

24 MR. HOLT: Let me see if I can --

25 JUDGE SIPPEL: Maybe Mr. Lehmkuhl can --

1 MR. HOLT: Let me see if I can ask a couple of
2 questions if I may.

3 JUDGE SIPPEL: You keep asking him the same
4 questions though that he's already answered. That's what's
5 got me concerned.

6 MR. HOLT: If you can give me a little latitude.
7 If I don't make things clear in the next few questions, I'll
8 move on.

9 JUDGE SIPPEL: I thought I had been giving
10 latitude.

11 MR. HOLT: Okay. Thank you, Your Honor.

12 JUDGE SIPPEL: Okay. A little more.

13 BY MR. HOLT:

14 Q Mr. Nourain, is it your testimony that in every
15 instance that an STA was filed, you -- that was filed after
16 you had pre-signed the STA and submitted it to Mr.
17 Lehmkuhl -- let me -- that was not artfully phrased. It's
18 getting late. Is it your testimony that all STA requests
19 that were -- that it was your standard practice to pre-sign
20 STA requests for filing later on by Mr. Lehmkuhl?

21 A Yes. I tried to expedite the matter. So I signed
22 all those STA forms in advance for him to file it with the
23 application. That way we could expedite the matter, yes.

24 Q And the filing -- so then the filing of the STA
25 request didn't have anything to do with the consideration as

1 to whether or not you were under a contractual obligation to
2 meet a certain deadline?

3 A The process of the licensing and the contractual
4 obligation, they were -- we were discussed -- as in the
5 past, they were all pretty much in line what's going to be
6 taking to go through that process and what's going to be
7 going through the licensing part of it. So they were all
8 the same. Of course, there's always the exception to the
9 rule. And at that point, we were looking for expedited
10 process such as, as I mention again, to expedite the
11 coordination and have Lehmkuhl, when he sends that STA, to
12 make sure he emphasize some of those issues that we have to
13 turn the customer on.

14 Q So some of the STAs emphasized the need to meet
15 contractual obligations and some of them didn't?

16 A If it wasn't, I don't recall that. But all I know
17 is that I have asked him to expedite that.

18 Q Well, the process of seeking special temporary
19 authority you said was -- your instructions were to expedite
20 the process in each case by filing an STA, correct?

21 A Expedited process overall. How you phrase it,
22 that was a legal thing that was up to him to do.

23 Q So that gets back to my earlier question. You're
24 saying some of the STAs sought authority to operate more
25 quickly than others? Is that your understanding?

1 A Let me clear that. Look at the COMSEARCH. The
2 COMSEARCH if you have to go on a regular basis, it takes
3 let's say 30 days to get the supplemental showing before
4 filing. You could expedite that to ten days, 12 days. So
5 generally speaking, that saves you another 14, 15 days.

6 Specifically what I could do is that I could spend
7 all my time to design and get those information on as fast
8 as I can, I do it. Of course, the rest has to do with the
9 filing. And Pepper & Corazzini makes sure they file it
10 right away and they send it and file the STA and give the
11 FCC the time to try to install within a few days to get the
12 STA -- get it approved. That's -- but --

13 Q So was it your understanding that some STAs would
14 be approved more quickly than others, some requests?

15 A It -- it all depends on if you are expediting or
16 not. It's like the process with the COMSEARCH. That's what
17 I said.

18 Q Well, the actual request to the Commission, I mean
19 you -- the Commission would receive an STA request from
20 Liberty saying please grant this special temporary authority
21 to commence operating a certain path, correct? Are you
22 saying that the FCC would grant those -- some of those
23 requests more quickly than others as a result of something
24 that was said in the STA request?

25 A Sir, all I'm saying is that I was involved with

1 the technical matter. All of this are the legal matters at
2 the time. Of course, right now I know a little different.
3 But at the time before April 28th, all the legal matter was
4 done by Pepper & Corazzini. Those are the questions that I
5 cannot answer.

6 JUDGE SIPPEL: You're getting argumentative with
7 this Witness, Mr. Holt. I mean, he's --

8 MR. HOLT: Your Honor, the Witness has testified
9 that it was his understanding that STA requests were
10 routinely granted within four or five days earlier today.
11 And now I'm understanding him to say that some of the STAs
12 he thought would be granted more quickly than others because
13 of the way it was phrased by Pepper & Corazzini. I'm trying
14 to reconcile the two. What was his understanding with
15 respect to the time period?

16 THE WITNESS: No, I said that --

17 JUDGE SIPPEL: You have -- no, wait a minute.
18 Before you answer the question, do you -- do you have -- do
19 you have some specific information that you can share with
20 us on this?

21 THE WITNESS: No, sir. It's just my -- my
22 assumption that --

23 JUDGE SIPPEL: Are you being your logical self
24 again?

25 THE WITNESS: You're absolutely right.

1 JUDGE SIPPEL: Your usual logical self.

2 THE WITNESS: You're absolutely right, sir.

3 JUDGE SIPPEL: I think that you're -- I mean,
4 look, I -- and Mr. Begleiter knows this. If you -- if you
5 develop a line of questioning with Mr. Lehmkuhl that
6 indicates that this Witness has been holding back
7 information, he'll be right down here again next week. But
8 I think that you've -- and I -- I mean, I think you've
9 exhausted this Witness. I think we all have. And I think -
10 - unless you've got something other to ask him that -- I'd
11 like you to move out of this category and go on to something
12 else.

13 MR. HOLT: Okay.

14 BY MR. HOLT:

15 Q Now, Mr. Nourain, you indicated a desire to
16 expedite matters. I'm wondering was it made known to you --
17 during the period of late 1994, early 1995, did anyone at
18 Liberty, Mr. Ontiveros or anyone else, indicate to you a
19 desire to activate paths as quickly as possible in order to
20 commence service to subscribers?

21 A No.

22 Q So you -- the efforts you've discussed to expedite
23 matters were generated solely by you?

24 A I'm not saying I did. You asked a general
25 question and I answered you a general answer to your general

1 question.

2 Q Well, it was your testimony that you took various
3 steps to expedite the application process.

4 A I said there were a couple of cases I have done --
5 I have built -- at the time, I have built close to 150
6 systems. You asked general questions and I answered
7 generally and I said that maybe it was a couple of cases.
8 But you're referring those couple of cases into January and
9 February. And I say no, they were not those.

10 Q Well, the instructions to Pepper & Corazzini to
11 file the STA requests at the time that you filed the --
12 Liberty filed the license applications were made with the
13 intention that it would expedite the process, right?

14 A That's what you're saying. I'm not saying that.
15 I'm just saying that part of it was because of consolidation
16 of the licenses. The other was that he was -- we were -- we
17 were -- in the past when I checked a few licenses, we found
18 out that sometimes the licenses would take six or seven
19 months to obtain as such that in order for us to activate
20 the customer, we had no other choice to go to apply for this
21 special temporary authority. So that's what all those
22 procedure and instruction was taking place.

23 Q So when you say you checked the licenses, did you
24 call Mr. Lehmkuhl to check on the status of the licenses
25 from time-to-time?

1 A I've repeatedly said that. If you would notice
2 that the licensing will come directly to me, not to Mr.
3 Lehmkuhl. That's what I testified to that a number of times
4 today. So as such I will not discuss something that I got
5 first. And I refer that -- send that to him later.

6 Q During the period late '94, 1995, were you ever
7 asked by Mr. Ontiveros or anybody else at Liberty about the
8 status of Liberty's FCC authorizations?

9 A No.

10 Q I'd like to refer you to Exhibit -- Time
11 Warner/Cablevision Exhibit 8.

12 JUDGE SIPPEL: It's Tab 8 in that.

13 BY MR. HOLT:

14 Q It's a memorandum dated April 20th, 1994 from you
15 to Mr. Price. Do you have that before you, sir?

16 A April 20, 1994, yes, I do have it, sir.

17 Q Okay. And if you look at Item 3 entitled, "FCC
18 Path Filing" --

19 A Yes.

20 Q -- am I correct to assume that's in reference the
21 process of filing an application for authorization to
22 operate a microwave path?

23 A Let me read that, please. That simply says what
24 it states. You read it and exactly that's what it says.

25 Q And it's referring --

1 JUDGE SIPPEL: He's saying the document speaks for
2 itself.

3 BY MR. HOLT:

4 Q I'd like to focus your attention on the last
5 clause of that sentence, "but the paths have not been filed
6 since I have not received a go-ahead for the project."

7 A That's correct.

8 Q Could you explain to me what you meant by -- by
9 that clause?

10 A Okay. Let me read the whole memo again and I will
11 answer that. Okay. If you notice, the beginning says, "In
12 reference to the relocation of the microwave system." The
13 discussion that prompted this letter is that we were going
14 to totally relocate that system from that particular --
15 Rivertower. Actually, as a matter of fact, the subject is
16 there, "Rivertower Removal and Relocation." When you
17 relocate some system to the other one, then you have to go
18 through the whole process of license.

19 Q Okay. Where were you going to be relocating that
20 tower? Do you recall?

21 A I'm trying to read that to answer your question.
22 The last paragraph says we were going to request that
23 transmitter relocated to the building called 420 East Fifty-
24 fourth Street.

25 Q Okay. And is it my understanding that you were

1 reporting -- correct that you were reporting to Mr. Price
2 that you hadn't filed for the FCC paths because you hadn't
3 received authorization to do so?

4 A No, no, no, sir. The project has nothing to do
5 with the FCC. This is a project that I was told that do the
6 engineering study to see that we need to possibly remove
7 completely this particular transmitter from that location.
8 Do this study and tell us that where you think it is going
9 to go. Design a system that's removing that and tell us
10 where it's going to go; how much it's going to cost; and how
11 long is it going to take. This is just what I call this is
12 the result of the engineering study.

13 Q Okay.

14 A And I reported to Peter Price about that. It has
15 nothing to do with any filing or any path -- any licensing
16 or anything.

17 Q But you had gone -- you had received authorization
18 or you had been requested to go ahead and conduct this study
19 that you were just referring to, right?

20 A I was requested to go?

21 Q Well, you were asked to go ahead and conduct this
22 study, correct?

23 A No, no. I was asked to do the engineering,
24 internal engineering study.

25 Q Right.

1 A Yes, I have done that.

2 Q Okay. But you indicate in this third clause, you
3 say that you hadn't filed the paths -- let me back up. Do
4 you recall whether or not you had to go through the process
5 of a frequency coordination through COMSEARCH with respect
6 to this project?

7 A No, sir. This was in an infant stage. It was
8 just somebody asked me can I engineer something, the
9 feasibility of it to be done. I said, yes, I can and I gave
10 an engineer report. I've done a number of those.

11 It has nothing to do with -- you do that and then
12 at some point you decide that, okay, you want to do that.
13 It looks like you do some engineering work and then they
14 say, okay, we want to do it. Let's just put a budget on it
15 and do that. They go find the building or they go find the
16 lots of this. And they say, all right, tell me what can you
17 do; how can you build it. And you study it; you survey it;
18 then you say, oh, you can build it. But you're talking
19 about where did I go and buy the material to do it. That
20 wasn't that. This was a very preliminary stage.

21 Q Okay. So I -- but after this stage, after you
22 complete this work, at some point according to this memo, it
23 appeared that you had an expectation to receive a go-ahead
24 to file the FCC application, right?

25 A According to this memo?

1 Q Well, you were indicating to Mr. Price that you
2 had not filed FCC applications because you hadn't received
3 approval to do so. You were still in the infant stages of
4 investigating whether or not this could be done from an
5 engineering perspective, right?

6 A No, this was my information that I gave him prior
7 to his questions. As I said, when I gave the report, I was
8 just going to make sure that I give everything. So this is
9 not as a result of him asking me can -- have I done that or
10 not.

11 Q But what I'm saying is that it -- is it fair to
12 say that you had made the decision or you were reporting to
13 Mr. Price that you hadn't filed the FCC applications because
14 you hadn't received authorization to do so.

15 A That's correct.

16 Q So it was your expectation when you drafted this
17 memo or it was your understanding when you drafted this memo
18 that you were to proceed with the task that you had been
19 assigned, but that you were not supposed to file an FCC
20 application --

21 MR. BEGLEITER: Objection.

22 BY MR. HOLT:

23 Q -- until you received approval. Is that right?

24 MR. BEGLEITER: Objection. Compound, confusing.

25 JUDGE SIPPEL: Yes. I think you'll have to break

1 that down a little bit. You've got him asking whether there
2 was an understanding and an assumption.

3 MR. HOLT: Okay.

4 JUDGE SIPPEL: I mean, you've got all kinds of
5 things going on there.

6 MR. HOLT: Okay. Thank you, Your Honor.

7 BY MR. HOLT:

8 Q Mr. Nourain, was it your understanding at the time
9 you drafted this memo --

10 A Yes.

11 Q -- that you were to proceed by providing the
12 information that you had been requested to gather: cost
13 information, engineering information?

14 A No.

15 MR. BEGLEITER: Your Honor, he should ask a
16 foundation question. That would really cut this short, the
17 foundation question being was this project -- when was this
18 project actually done.

19 JUDGE SIPPEL: You mean when was it activated?

20 MR. BEGLEITER: No, when did the -- when did these
21 relocations occur. And that will end -- I think that will
22 end the air of inquiry.

23 BY MR. HOLT:

24 Q When did these relocations actually occur?

25 A I have to think about that. April of -- April,

1 June of 1996.

2 MR. BEGLEITER: Right.

3 BY MR. HOLT:

4 Q Okay. But getting back to clause three --

5 JUDGE SIPPEL: Well, if they occurred in April or
6 June of 1996, then we really -- do we -- what do we care
7 about that?

8 MR. HOLT: Well, no. We don't care about when the
9 relocation actually occurred. What I'm trying to ascertain
10 from this Witness is what his understanding was with respect
11 to when it was okay for him to file FCC applications.

12 JUDGE SIPPEL: He's not filing applications.

13 MR. HOLT: Because he hadn't received authority
14 to.

15 MR. BEGLEITER: No, because he never files
16 applications.

17 JUDGE SIPPEL: No, he doesn't file applications.
18 See, there's a weakness in your premise. This is not the
19 man that files applications. The applications get filed by
20 Mr. Lehmkuhl.

21 MR. HOLT: Right, but --

22 JUDGE SIPPEL: Yes. Well, that's a big right.
23 Remember, he signs these things ahead of time in batches,
24 applications both for licenses and STAs. And they're
25 sitting with Mr. Lehmkuhl.

1 MR. HOLT: Right. But my understanding, Your
2 Honor, is that Mr. Nourain has an understanding as to when
3 the applications are filed because they are either sent to
4 him --

5 JUDGE SIPPEL: He's got -- he has devised this
6 time table. And he looks at the calendar. And he's made
7 the assumptions -- I mean, wrongfully made the assumptions
8 that, okay, this is the time that I have an STA now, so I
9 can go ahead and activate this. I mean, he's told us this
10 in great detail. That's his technique. I don't think
11 you're going to break it. I really don't.

12 MR. BEGLEITER: As a matter of fact, I'd ask Your
13 Honor to look at number four in that very document. And
14 this pre-dates the HDO. It pre-dates everything.

15 JUDGE SIPPEL: Go ahead. You know, please,
16 let's -- let's move this along, please.

17 BY MR. HOLT:

18 Q Mr. Nourain, have you ever had occasion to speak
19 to Howard Milstein?

20 A I have spoken with him, yes.

21 Q On more than one occasion?

22 A I would say a total of maybe a handful of
23 occasions.

24 Q Have you ever spoken to Mr. Howard Milstein with
25 respect to the operation of unlicensed paths, the issue that